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TO THE

PRINCIPAL MATTERS CONTAINED IN THIS VOLUME.

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Where a ship is detained in port by ice, and her cargo is damaged before the season allows her to proceed, though she subsequently delivers it to the consignees, a shipper cannot, without rescinding the contract, sustain a libel *in rem* for a breach of the bill of lading, until the term for the performance of the contract has expired. Jones *vs.* The Floating Zephyr; Mytinger, &c. *vs.* the same, - - - - - - - 494

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If a father purchase land, and take the title in the name of his infant child, it is deemed in law an advancement and no trust results to the father subject to execution at law; nor is the land liable for the subsequent debts of the father. Gaugh *vs.* Greenlaws, - - - - 591

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A claim against an innkeeper for money stolen at the inn, from the trunk of a guest, is assignable. Stanton *vs.* Leland, - - - 264

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The Supreme Court of that State have decided that the act of the 14th March, 1853, "declaring the effect of assignments to trustees, in contemplation of insolvency, and the statute of 1838, of the same import, do not affect assignments or transfers made for the sole benefit of the assignees or transferrees; but if made trustees for other parties, the statute applies, and the property is held for the equal benefit of all the creditors. *Ibid.*

But no trust will be implied merely from the fact that an assignment or transfer has been made by an insolvent debtor to indemnify a surety for such debtor, if no more property has been assigned than was necessary for that purpose, and the facts warrant the presumption that nothing was designed but the bona fide indemnity of the surety. *Ibid.*

Although such surety may be liable to respond to the creditors not provided for, for any surplus after paying the debts for which he was bound, he is not a trustee within the contemplation of the statute referred to. *Ibid.*

Where a mortgagor, after assigning a policy of insurance to secure his mortgage debt, alienes, no recovery upon the policy, in case of subsequent loss, can be had by the *mortgagee.* Grosvenor *vs.* Atlantic Mutual Insurance Company, - - - - - - - - 118

The mortgagee takes the assignment with knowledge that the contract of insurance may be avoided by a failure on the part of the mortgagor, the assured, to perform any of the conditions of the policy. *Ibid.*

Such transfer to a mortgagee is merely an appointment to receive any money which may become due from the insurers by reason of loss sustained by the mortgagor. *Ibid.*

As the rights of the appointee are wholly derivative, and cease with the determination of the mortgagor's interest, no *contract* on the part of the insurers is created by such transfer, to indemnify the mortgagee against loss. *Ibid.*

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A bail bond taken by the sheriff which omits the name of the security in the body of it, although signed and sealed by him, is a void bond, and cannot be enforced. Adams *vs.* Hedgpeth, - - - - 60

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BANKING.

It seems that the common law right of issuing paper, representing money, and to be used as currency, by private bankers, has never had any existence by the usages of this country, such paper having uniformly been issued by the government, or by banks authorized by government. Anderson *vs.* Alexander, - - - - - - - 173

By the Constitution of Indiana, no bank of issue can be established, except a State bank, and free or private banks, pursuant to the general banking law. *Ibid.*

It hence appears that an association of individuals, for the purpose of banking, not in pursuance of any statute law, is an illegal institution. *Ibid.*

BANKRUPTCY.

Under the United States Act of 1841, no title passes on a sale and conveyance of a bankrupt's land by his assignee, unless it has been made in pursuance of an express order of court to that effect, whether general or special; and *it seems* that the recitals in the assignee's deed will not be sufficient evidence of such an order. Cleveland *against* Boerum, - 144

So where the land is held adversely at the time of the decree in bankruptcy, a sale by the assignee more than two years after that date will pass no title by force of the limitation in the eighth section of the Act. *Ibid.*

BEAST. See Trespass.

BEQUEST.

A testatrix being possessed of cash in the house, a balance at a saving bank, for the taking out of which she had given notice, and money secured on two promissory notes payable on demand, by her will bequeathed "all ready money." Held, that the terms "ready money" included the cash in the house and the balance at the savings bank, but not the promissory notes. Re Powell's Trust, - - - - - - 311

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An agreement was made between the drawer and acceptor of a bill of exchange, at the time it was given, that the acceptor should deposit with the drawer some canvas as a collateral security for the payment of the bill, with power to the drawer to sell the canvas and apply the money arising therefrom towards the discharge of the amount of the bill, should it not be paid at the proper time. The drawer endorsed the bill after it was overdue, and on non-payment of the bill when due, sold the canvas, and realized part of the amount of the bill: *Held*, (affirming the judgment of the Court of Exchequer,) that the agreement between the drawer and acceptor, as to the canvas, created an equity which attached to the bill in the hands of the endorsee, who received it after it was overdue; and, as the drawer, after the endorsement, had sold the canvas, and retained the proceeds, the endorsee was prevented from recovering on the bill for so much as the canvas realized on its sale. Holmes *vs.* Kidd and another, - - - - - - - - - - 563

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BILL OF REVIEW.

A bill of review should be filed in the court where the original cause was heard, but the objection to the jurisdiction of another court is waived, if not taken by a demurrer or plea. Gaugh *vs.* Greenlaws, - - 591

A bill of review will not lie, unless there be error apparent in the body of the decree, without further examination; or new matter hath arisen in time after the decree, or new proof came to light after the decree made, which could not possibly have been used at the time the decree passed; and an infant defendant, if represented by a *guardian ad litem*, will be subject to this rule. *Ibid.*

BOND. See Bail Bond. Note. Municipal Corporation.

A merely formal departure from the act of the Legislature, in the mode of framing the bond, will not render it void.

Where the Legislature directed bonds of a city to be made "negotiable and transferable by the order of the President and Directors" of a railroad company, and the bonds on their face were made payable to the "company and its assignee or bearer," such bonds were held to be valid. Maddox *vs.* Graham, - - - - - - - 746

The Pennsylvania Act of 12th April, 1851, authorizing the County of Washington to subscribe to the stock of the Hempfield Railroad, and to issue in payment for the subscription, the bonds of the county, is not a violation of either the constitution of the State or of the United States. M'Coy *vs.* The County of Washington, - - - - - 193

The issue of coupon bonds was authorized by the Act. *Ibid.*

It is not necessary in a suit by the holder of the bonds or the coupons to show that a subscription was in fact made, the bond reciting the fact. *Ibid.*

BREACH OF DUTY. See Master and Servant.

BREACH OF THE PEACE.

Where an ordinary driver of a passenger railroad line is driving for hire for the company in the business of transporting passengers on and along the railway track on the Sabbath day, for the usual week-day fare, he is guilty of a breach of the peace. Commonwealth *vs.* Jeandell, - - 615

When worldly employment is carried on in such a manner and in such a place as to disturb the peace and religious exercises of the community, either at home or in churches, and cannot be restrained by the imposition of the penalty in the act, such circumstances constitute a breach of the peace. *Ibid.*

CARGO. See Contribution.

CARRIER.

See Contract. Insurance. Navigation. Negligence.

Where an action was brought for the non delivery of certain goods entrusted to the owners of the propeller Spaulding, which were put on board at Buffalo, to be transported to Detroit, and which were accidentally burned without negligence, it was held that, inasmuch as the loss occurred on a lake vessel engaged in commerce within the jurisdiction of Congress, the owners of the propeller were exonerated from liability under the act of March 8, 1851, passed to limit the liability of ship owners. The American Transportation Company *vs* Moore, - - - - - 15

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CAUSE OF ACTION. See Negligence.

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CHANCERY.

A decree in chancery obtained by fraud, is void, and a court of chancery upon original bill will set it aside, and restore the party defrauded to his former situation and rights. Gaugh *vs.* Greenlaws, - - - 591

Equity favors innocent purchasers without notice, who have paid a full consideration and taken conveyance for land; but where a purchaser has actual or constructive notice of an outstanding title, he will not be protected against it. *Ibid.*

CHARGE OF JUDGE.

When the court is asked to, and does, charge the jury as to the conclusive nature of a written contract between the parties, if they shall find such contract established by the evidence, and there is no proof in the case showing, or tending to show, a written contract of the kind mentioned in the charge, such charge is improper, as tending to mislead the jury. American Transportation Company *vs.* Moore, - - - - 325

CITY ORDINANCE, See Passenger Railway.

CITY OF PHILADELPHIA. See Orphan.

CIVIL LAW.

See Partnership—Leading Article, - - - - - 129

COLLATERAL SECURITY. See Bill of Exchange.

COLLECTOR. See Action.

COLLISION.

The Tuscarora and the Andrew Foster, two American ships, came in collision in the Irish channel, whereby the latter ship, together with her cargo, was wholly lost. The owners of the cargo of the Andrew Foster attached the Tuscarora in the English admiralty, and she was condemned to damages; upon a bill filed in the Lord Justices' Court, asking for the benefit of the English Merchant's Shipping Act of 1854, which is similar in its provisions to the Act of Congress of March 3, 1831, it was held, that inasmuch as both ships were foreigners, the American owner could not avail himself of the British statute before an English court. Cope *vs.* Doherty, - - - - - - - - - 181

It would seem that neither the English nor the American statute can be made available to the American shipowner, in case of collision between foreign ships, where the cause is before an English tribunal. *Ibid.*

COMMON CARRIER.

Although it devolves upon a common carrier to show affirmatively the terms of any contract which lessens his common law liability, yet that fact

is to be proved like any other, by any pertinent evidence. If in writing, the writing must be shown; but, if by parol, there is no rule which requires different proof from that which would establish any other contract. The jury must be satisfied, from the evidence, that a certain contract exists; and, if satisfied, that is sufficient. American Transportation Company *vs.* Moore, - - - - - - - - - 352

CONDITIONS OF POLICY. See Insurance.

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See Banker. Bond. Fraud. Legislative Authority. Municipal Subscription. Mandamus. School.

Acts of Legislature authorizing subscriptions by municipal corporations to railroad companies, are constitutional. Maddox *vs.* Graham, - 746

The regulation of the School Committee of Boston, which requires that pupils in the public schools shall, among other things, "learn the Ten Commandments, and repeat them once a week," is not a violation of the constitutional provision which secures to the citizen liberty of conscience and of worship. Commonwealth on complaint of Wall *vs.* Cooke, - 417

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Acts authorizing subscriptions by corporations are to be construed strictly against the corporation and in favor of the holders of the bonds. Maddox *vs.* Graham, - - - - - - - - 746

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If the construction of a State statute has been settled by the decision of the highest court of the state, the courts of the United States uniformly adopt such construction. Coolidge *vs.* Curtis, - - - - 334

CONTRACT.

See Assignment. Insurance. Lien. Master and Servant. Sale. Usury.

Whether, in a particular case, a merchant in New York, shipping goods to his correspondent in the interior, had authority to make a contract on behalf of the correspondent for shipment, on different terms from those ordinarily adopted by common carriers, is a question of fact, to be determined by the jury upon the evidence; and the court cannot, properly, be asked to make any charge that shall absolutely dispose of the fact in controversy. The American Transportation Company *vs.* Moore, - - 352

Where a party contracts for transportation over a route composed of several railroads, for which he pays an entire sum, and receives a through ticket or receipt, the contract is entire, and not of several distinct liabilities. If no partnership in fact exist between the roads, he may treat the contract as entire, or several, so far as the other parties are concerned. Check *vs.* The Little Miami Railroad Company, - - - - 427

By the appointment of a common agent to receive the entire consideration, and issue through tickets and checks, which they recognize and assume, the several companies are made aware that the contract is treated by the passengers as entire, and not several. *Ibid.*

If the agent at the starting point fails to disclose his principals, and to contract on their behalf, whether jointly or severally, he, or the company represented by him, may be treated as sole principal; but if the contract be, in fact, entire, and he is, in fact, dealing for others who receive the benefits of the contract, the other contracting party may look to the real principals, and subject all who are interested in the joint contract. *Ibid.*

The delivery of a check to a passenger is intended to relieve him of any care or superintendence of his baggage, while on its journey, and devolves such care upon the agents of the several roads over which it passes. *Ibid.*

A corporation can make no valid contract except in the course of its

business and within the scope of its charter, and any departure from that business is an excess of authority in its officers. Pearce *vs.* The Madison and Indianapolis Railroad Co., and the Peru and Indianapolis Railroad Co. - - - - - - - - - - - 409

Two railroad corporations, before the date of the notes on which this action was brought, were consolidated by special agreement, but without authority of law, and acted under a common board of management, and thus carried on the business of both roads, and while so acting purchased a steamboat, for which the notes were given. They afterwards dissolved their joint business relations, and each road conducted its own affairs; while united the notes sued on were given. Held, first, that persons dealing with the defendants must take notice of the limitations imposed upon their authority by the act of incorporation, and second, that these notes not having been given by authority of law, no recovery could be had on them. *Ibid.*

The legislative pledges of the public faith, and of the public works and their income, as security for the money borrowed to construct the works, is not a contract that can be enforced by the judiciary of the State Sunbury and Erie Railroad *vs.* Cooper, - - - - - 158

CONTRIBUTION.

The true rule with regard to the right to contribution in the maritime law, is the achievement of the object designed, even for a short period of time, by the sacrifice of the property; and this will be sufficient to give rise to and justify contribution, notwithstanding there may be a subsequent loss, provided the latter results from a new peril. In the matter of the Cargo of the Great Republic, - - - - - - 271

In a case where the following facts appeared—that the original or primary cause of the loss was an accident, not the subject of general average; that the proximate cause of the preservation of all that was saved was the scuttling of the ship; that the immediate cause of the scuttling was a fire between the lower decks of the vessel; that such fire was brought there by a burning spar which had been cut away by the voluntary act of the crew; that such act, instead of averting the peril it was designed to prevent, was the real and efficient agent of the loss that followed: Held, first, that the direct damage to the cargo in the lower hold, as well as that to the ship's knees and timbers by the scuttling, is a proper subject for contribution: Second, no damage to the cargo between decks and on fire, arising from the water thrown in, is a proper subject for contribution. *Ibid.*

Methods of computing and rules for contribution suggested. *Ibid.*

CORPORATION.

See Contract.

A deed of land by the corporation to two of its directors is void as against creditors of the corporation Cleveland *vs.* The La Crosse and Milwaukee Railroad Co., Chamberlain, Kneeland and others. - - 536

A lease of a railroad and rolling stock, with the power in the lessee to run the road and to purchase additional rolling stock at his discretion, and to extend the road out of the proceeds or revenue, the lease being for an indefinite term of time, is void as against creditors of an insolvent company, for hindering or delaying them in the collection of their debts. *Ibid.*

COUNTY COMMISSIONER. See Mandamus.

COUNTY SUBSCRIPTION. See Bond.

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Coupons are prima facie evidence that the holder is also the holder of the bond from which they are cut, or else was so when they were separated. McCoy *vs.* County of Washington, - - - - - 193

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DAMAGES.

It is a settled principle, that whenever any act injures another's rights, and would be evidence in future in favor of a wrong-doer, an action may be maintained for an invasion of those rights; although there be no proof of any specific injury. The Delaware and Hudson Canal Company *vs.* Torrey, - - - - - - - - - - 611

Hence, when saw-dust from the defendant's mill floated down into the plaintiff's basin, although it alone might not cause inconvenience to the plaintiff, but accompanied with saw dust from other mills, the plaintiff's flowage was obstructed: it was held, that the defendant's deposit of any saw-dust was an actionable injury, inasmuch as it violated the plaintiff's rights. *Ibid.*

In order to maintain an action under the 9 and 10 Vict. c. 93, actual damage must have accrued from the death of the deceased. Proof of the death and relationship of the parties does not give a right to nominal damages. Duckworth, Administrator, *vs.* Johnson, - - - - 630

In an action under that statute by a father for the death of his son, it was shown that the deceased earned a certain weekly sum, which he brought into the general stock of the family:—Quære, whether, in order to maintain the action, the plaintiff should have given evidence that the weekly expense of keeping the deceased did not exceed that amount? *Ibid.*

Where a negro slave, confined in jail on the charge of rape and murder, was taken by the defendants, acting in concert with a mob, from the sheriff's custody and hanged, it is such a deliberate, premeditated and violent destruction of the plaintiff's property, as to entitle him to vindictive damages. Polk *vs.* Fancher, - - - - - - - - 675

It is not permitted to prove, in such cases, in order to diminish the pecuniary value of the slave, that he was apprehended for rape and murder; was infamous, and therefore of no value. *Ibid.*

Where in an action for damages upon an alleged libel, the judge at the trial instructed the jury that if they found for the plaintiff, the amount of their verdict was in their absolute discretion, and that such discretion was uncontrolled by any legal rule or recognized measure of damages, it was held erroneous. Thompson *vs.* Keereber, - - - - - 50

The judge should have charged the jury that if they found for the plaintiff, they should give such an amount of damages as in their opinion would be an adequate compensation to the plaintiff for the injury actually sustained by him: and if the libel originated in malice, in their opinion, they might give such additional damages as they thought would justly punish the defendant. *Ibid.*

DEATH. See Damages.

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DEED OF GIFT. See Dower.

DELIVERY. See Sale. Usage.

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DEPOSIT OF POLICY WITH CREDITOR. See Life Insurance.

DIRECTORS. See Corporation.

DISHONOR, NOTICE OF.

In an action by the endorsee against the drawer of a bill of exchange on B, the following writing was held to be a sufficient notice of dishonor: "B's acceptance to J," (the defendant,) "for 500*l.*, due on the 12th January, is unpaid. Payment to R. & Co. is required before four o'clock." Paul *vs.* Joel, - - - - - - - 681

DISSOLUTION OF PARTNERSHIP, - - - - - 129

DISTRIBUTION. See Partnership.

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Where A made to B a deed of gift, embracing both personalty and realty, in which deed was a special power in the nature of an appointment, which B executed by his last will according to the terms of the power: Held, that the wife was not entitled to dower in the realty so conveyed by deed of gift. Thompson *vs.* Vance, - - - - 222

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See Bankruptcy. Injunction. Mandamus. Parties to Bill. Partnership.

The power of the Court of Equity to reform deeds in cases of fraud, is constantly exercised, and cannot now be questioned. Barnes *vs.* Gregory, 678

Where the proof leaves no doubt that the sale of land was by the acre, and not in gross, and was so understood by both parties, and the vendee receives more land than he pays for, the vendor can compel payment for the whole quantity sold. *Ibid.*

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See Common Carrier. Damages.

Parol evidence of an agreement between the Railroad Company and the Commissioners of the County, that the county should not be called upon for the interest, is inadmissible to affect the right of the holder of the coupons to recover. McCoy *vs.* County of Washington, - - - 193

EXAMINATION OF THE CASE OF SCOTT *vs.* SANDFORD, 19 Howard S. C. Rep. 393, - - - - - - - - 322

EXECUTION ATTACHMENT.

The funds of an insolvent corporation in the hands of a banker, are liable to execution attachment by a creditor of the corporation, and it is no defence that the banker is also a creditor of the corporation to an amount exceeding the funds in his hands. Penrose *vs.* Erie Canal Company, - - - - - - - - - 126

Money of a company deposited by the treasurer as such, is the money of the corporation in the hands of the banker. *Ibid.*

FENCE. See Negligence.

FERRY. See Negligence.

FOREIGN ACT. See Collision.

FOREIGN SHIP. See Collision.

FRAUD See Injunction.

No court has authority to entertain a question that involves a charge of fraud in the legislature, as a means of setting aside a public law passed by it. Sunbury and Erie Railroad *vs.* Cooper, - - - - 158

A party who has obtained the passage of a private Act of Assembly by bribery, imposition, or other fraudulent means, would, perhaps, not be entitled to any benefit from it, if the fraud be shown. *Ibid.*

No court has authority to entertain a charge of dishonest motives against the legislature as a means of showing that any act of legislation is unconstitutional. *Ibid.*

FUND (JOINT). See Partnership.

GIRARD'S WILL. See Orphan.

GUARDIAN.

A purchase of land by a *guardian ad litem* of an infant defendant, pending a suit in chancery involving the title to the land, is champertous and void. Gaugh *vs.* Greenlaws, - - - - - - - 591

GUEST. See Innkeeper.

GUNPOWDER. See Insurance.

HABEAS CORPUS.

The first clause of the 14th Section of the Judiciary Act of 1789, which provides that the Supreme, Circuit, and District Courts of the United States "shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute, which may be necessary to the exercise of their respective jurisdictions, and agreeable to the usages and principles of law, does not authorize said courts to issue a habeas corpus, unless it is necessary in aid of jurisdiction, in a case or proceeding there pending. Ex parte Everts, - - - - - - - 79

The case of a father claiming the custody of an infant child, is not one in which a habeas corpus can issue, by a court of the United States, as ancillary to the exercise of its jurisdiction, under the above cited clause of the Act of '89. *Ibid.*

Nor can a Circuit Court of the United States take jurisdiction under the 11th Section of the Act of '89, although the father is the citizen of another State, as the matter in dispute has no pecuniary value, and cannot be estimated in money. *Ibid.*

HOUSE. See Right of Support.

INDIANA. See Banking.

INJUNCTION.

Where partners make a settlement under the sanction of an award of referees, and certain conveyances are made in pursuance of such settlement, and it afterwards turns out, upon a second reference, that the partnership dealings and accounts are adjusted in another manner by reason of a mistake in the first reference, but the matter of the division of certain land was not brought before the second reference, equity will enjoin, by perpetual injunction, an action of ejectment brought by one against the other. Farris *vs.* Kirkpatrick's Heirs and Administrator, - - 672

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INLAND NAVIGATION. See Navigation.

INNKEEPER.

The liability of an innkeeper extends to money stolen from the trunk of a guest. Stanton *vs.* Leland, - - - - - - - - - 264

Where the guest, having packed his luggage for departure, locks his room, gives notice thereof to a clerk, and leaves the key of the room with such clerk, at the office, the innkeeper will be responsible for money stolen from a trunk, although a notice may have been brought to the knowledge of the guest, requiring money and valuables to be placed in a safe at the office, during his sojourn at the inn. *Ibid.*

An innkeeper, being responsible for the safe keeping of such goods, property, and money in packages, as the guest brings with him to the inn, can rightfully require permission to take the actual custody of money, jewels, and goods of especial value, not required by the guest for his daily use and convenience, and to place them in such safe depository within the inn as he may provide. *Ibid.*

And notice of such requirement being actually given to the guest, orally or by a printed notice furnished to and read by him, it is his duty to conform thereto, and if he do not, and a loss is suffered in consequence, with

the actual fault of the landlord and his agents, the landlord is not liable for the loss. *Ibid.*

INSOLVENT CORPORATION.

See Execution Attachment.

INSURANCE. See Life Insurance. Assignment.

A loss which arises from the efforts made to prevent goods from being destroyed by fire, must be borne by the assurer, and not by the insured, whether the particular injury in question be produced by water used to extinguish the flames, or results from dangers, such as theft, to which the property is exposed in an attempt to remove it to a place of safety. Agnew *vs* The Insurance Company, - - - - - - - - - 168

A mortgagor effects a policy of insurance against fire, which provides that the insurers' liability should cease upon assignment of the *policy* without their consent: and that it should become void in case of the termination of the interest of the insured in the subject of the insurance. Subsequently the mortgagor makes an assignment of *all his title and interest* in the policy to the mortgagee—in *visual juxtaposition* to the policy, though without the written consent of the insurers, and a renewal is effected and premium therefor paid by the mortgagee. Mortgagor then conveys the fee to the mortgagee.

Held, That the Court properly instructed the jury that if the existence of the assignment was known to the assurers, the act of renewal included the consent required by the policy.

Held, however, furthermore, that the assignment to the mortgagee only operated as an equitable transfer of the policy, and that the approval of the assignment by the insurers did not convert his contract into a *new* one for the independent insurance of the mortgagee. Bilson *vs.* The Manufacturers' Insurance Company, - - - - - - - - - 661

The transfer of the property to the mortgagee, so as to divest the mortgagor's (the plaintiff's) interest, has the same effect as if the conveyance had been made to some third person other than the mortgagee, there being, in both cases, a change of interest in the subject of the insurance. *Grosvenor* vs. *The Atlantic Mut. Ins. Co.*, 3 Smith, 391, and *The State Mut. Ins. Co.* vs. *Roberts*, 7 Casey, 440; 7 Am. Law Reg., 229, approved. *Ibid.*

A clause in a policy of fire insurance, that the insurers should not be liable for a loss from an explosion of gunpowder, applies to the case of a fire originating from the explosion of gunpowder on the premises. Greenwald *vs.* The Insurance Company, - - - - - - - - - 282

Where, to stay the spread of flames, a house already on fire is blown up with gunpowder, there being no means of extinguishing fire by water in the town, the insurers are liable. *Ibid.*

The plaintiffs, common carriers, effected an insurance against fire with defendant; one of the conditions of the policy was, that "goods held in trust or on commission are to be insured as such, otherwise the policy will not extend to cover such property." £15,000 was declared to be insured on "goods, their (the plaintiffs') own, and in trust as carriers," on certain premises therein named, and the insurers were "liable to pay, reinstate, or make good, at their option, as to the said assured, all damage or loss which the said assured shall suffer by fire on the property herein particularized, not exceeding on each item the sum hereinbefore declared to be insured."

Held, That the policy extended to cover the whole value of any goods sent to plaintiffs to be carried, and not merely the plaintiffs' interest as carriers:

Held, further, that plaintiffs could recover the value of a package of silk destroyed on the said premises, by fire, although it had not been declared as required by the Carriers' Act, and therefore they would not be liable as carriers for its loss. The London and North-western Railway *vs.* Glyn, - - - - - - - - - - - - - - - 693

A voyage that is insured, must be so conducted as not to change the risk insured against. If the usual mode, or the agreed mode of conducting it be changed, without a necessity *arising from a danger insured against*, the risk is changed. Merchants' Insurance Company *vs.* Algeo, 608

When a party gets insurance on a voyage to be conducted in a prescribed mode, he must be understood as stipulating that that mode is practicable and shall be followed. If then the voyage in that mode is not practicable, at a certain stage of water, he has no insurance when attempting it at that stage. *Ibid.*

The insured has no right to change the terms of the policy by choosing to start at a time that makes the change necessary. A change from necessity is one arising from a cause discovered after the commencement of the voyage. *Ibid.*

A policy of insurance against fire, assigned as collateral security for a mortgage, is liable to be avoided in the hands of the mortgagee, by any subsequent breach of the conditions of the insurance by the owner of the property, though the assignment may have been duly approved by the Insurance Company. State Mutual Insurance Company *vs.* Roberts, - 229

Where a policy so assigned, and duly approved, contained the usual provision, that "if the insured, or his assigns, should thereafter effect any other insurance on the same property, and *should* not with all reasonable diligence give notice thereof—and have the same endorsed on the policy, or otherwise acknowledged in writing, the policy should cease and be of no further effect," and the mortgagor subsequently, without the knowledge of the mortgagee, effected another insurance on the property, which he neglected to give notice of, it was held that the first insurance was thereby avoided, and that no recovery could be had thereon by the mortgagee. *Ibid.*

Where, in a policy of insurance, the excepting clause was in these words—"it is understood that this company is not liable for any breakage or derangement of the engine, or bursting of the boiler, or any of the parts thereof, or for the effects of fire connected with the operation of, or the repairs of the engine or boiler, unless the damage be occasioned and the repairs rendered necessary by the stranding or sinking of the vessel, after her engines and boilers shall have been put in successful operation"—it was held, that the purpose of the exception was only to relieve the underwriters from liability to indemnify the assured for broken or deranged machinery, and not to exempt them from the obligations to pay for a total loss, even though that loss could be traced back to the breakage of the machinery. The Western Insurance Company *vs.* Cropper, 237

INTEREST.

See Bond. Insurance.

INTERPLEADER.

On an execution in a county court against the goods of the defendant, in a suit of A. *vs.* B., certain goods in the hands of C. were seized, who paid a sum of money to release them, and proceeded by interpleader. It appeared that the goods originally belonged to B., but previous to the execution had been pawned with a pawnbrobker, (it did not appear by whom,) and the duplicates had been deposited in the hands of C. by L. to redeem them, and hold them as security for the money advanced, who redeemed them accordingly. There was no evidence to show the time at which, or the circumstances under which L. became possessed of the duplicates, or that he had any interest therein: Held, that C. was entitled to the money paid to release the goods. Furber *vs.* Sturmy, - - 296

INTERPRETATION. See Insurance.

JUDGE. See Question of Law.

JUDGE'S CHARGE. See Libel.

JUDGMENT.

A valid judgment and execution must be shown by a party who seeks to support a title to land under a sheriff's deed for the same. Gaugh *vs.* Greenlaws, - - - - - - - - - 591

JURISDICTION.

See Habeas Corpus.

A county, as a municipal corporation, may be sued in the courts of the United States.

The holder of a coupon bond payable to bearer, being a citizen of a different State from the defendants, and entitled to sue in the courts of the United States, though the previous holder of the bond might not have been so entitled to sue. M'Coy *vs.* County of Washington, - - - 193

Specific performance is not a proper form of remedy for refusal to carry out a contract for the purchase of bonds of an Improvement Corporation; there being ordinarily an adequate remedy by the common law action for damages. But those courts that have original jurisdiction of the cause of action, and authority to follow both equity and common law forms, may give redress in such a case in the equity form, if there be no demurrer to the form. Sunbury and Erie Railroad Company *vs.* Cooper, - - 158

Specific performance of a contract to purchase bonds of the Delaware Division Canal Company, is not within the original jurisdiction of the Supreme Court in banc; but at Nisi Prius they have original jurisdiction of such a breach of contract, and may give redress in the equity form, if there be no demurrer to the form. *Ibid.*

JUROR.

See Jury.

JURY.

See Question of Law.

When a juror is withdrawn from the panel at a criminal trial, even by consent, the fact must be noted of record. Commonwealth *vs.* Shaw, - 289

The record must show that twelve jurors were sworn, and if it appear that less or more than twelve delivered the verdict, it is error. *Ibid.*

Waiver by consent of a prisoner in a criminal case, is a nullity. *Ibid.*

JURY, DISCRETION OF.

See Libel.

LAKE COMMERCE.

See American Transportation Company *vs* Moore, - - - 15

LARCENY.

The prisoner and the prosecutor's wife were jointly concerned in removing certain goods of the prosecutor from his house. They conveyed the goods to a distant place, where the wife took lodgings in her own name, and was afterwards found living with the prisoner. The prisoner was tried for stealing the goods, and on the trial the wife was examined on his behalf, and swore that they had not gone away for the purpose of carrying on an adulterous intercourse, and never had committed adultery together. The jury were directed, that if they were satisfied that the prisoner and the prosecutor's wife, when they so took the property, went together for the purpose of having adulterous intercourse, and had afterwards effected that criminal purpose, they ought to find the prisoner guilty; but if they believed the wife, that they did not go away with any such criminal purpose, and had never committed adultery together at all, the prisoner would be entitled to his acquittal. The jury convicted the prisoner, and the question was reserved as to whether the direction was right:—Held, that it was. Reg. *vs.* Berry, - - - - - - - - 380

LEGISLATION.

See Passenger Railway.

LEGISLATIVE AUTHORITY.

See Fraud. Contract.

The Legislature has authority to sell the public works constructed by the State, and the courts have no authority to declare the sale void for inadequacy of price, or for any undue favor to local interests supposed to have influenced the sale. Sunbury and Erie Railroad *vs.* Cooper, - 158

The Act of Assembly of 21st April, 1858, authorizing the sale of the Slate Canals, is not unconstitutional. *Ibid.*

LIABILITY OF SHIP OWNERS.

See American Transportation Company *vs.* Moore, - - - 15

LIEN.

Where the outfit and supply of materials for building and equipping a vessel, and making her ready for sea, by furnishing ship-chandlery, sails, rigging, materials, &c., were bought in New York, and sent to Plymouth, North Carolina, and used by the vessel, which rendered her seaworthy, and enabled her to make voyages and earn freight; it was held, in compliance with the decisions of the Supreme Court of the United States in Pratt *vs.* Reid, 19 How. 359, and Jefferson *vs.* Beers, 20 How. 393, that no admiralty lien existed, and no jurisdiction attached in the Court of Admiralty. Collis *vs.* The Cœrnine, - - - - - - 5

A contract made in a port of the United States, to construct a vessel in a port of another State, by actually building her or by supplying materials for such construction, is not a maritime contract, creating a lien upon the vessel for the value of the materials, supplies, or labor, which is enforceable in the admiralty. *Ibid.*

LIFE INSURANCE.

Where the life policy contained a provision that should the assured commit suicide the policy should be void, and the assured died by his own hand, being of unsound mind as found by the coroner's jury; held that the state of mind of the party committing suicide was not material, and that "suicide" could not be distinguished from "dying by his own hand;" which has been held to be within a like proviso. Dufaur *vs.* The Professional Life Assurance Company, - - - - - - 301

Where the assured had deposited the policy with a creditor as security for a debt due and for advances, without notice of the deposit to the office, and the assignee had continued to pay the accruing premiums; held that it was a valid deposit and assignment, and that the assignee, who was also administrator, was entitled to recover the advances made for the assured's benefit. *Ibid.*

A life policy contained the following condition: "This policy will be void if the life assured die by his own hands, the hands of justice, by dueling, or by suicide: but if any third party have acquired a bona fide interest therein by assignment, or by legal or equitable lien for a valuable consideration, or as security for money, the assurance thereby effected shall nevertheless, to the extent of such interest, be valid and of full effect." On the 9th July the assured became bankrupt according to the laws of Valparaiso, and his property then vested in the escribano, or officer of the court, who took possession, and on the 15th July assignees were appointed, to whom all the property passed by operation of law. On the 14th July the assured committed suicide. *Held*, that the assignees were not entitled to the benefit of the policy under the above condition, but that the condition was intended to apply where there was a contract and a transfer by the parties. Jackson *vs.* Forster, - - - - . - 302

LIMITATION. See Carrier.

LIVE STOCK. See Carrier.

LOSS. See Insurance.

MANDAMUS.

At common law, the relator might move to disallow the return to a mandamus, and if deemed insufficient, a peremptory mandamus would be allowed, but since the statute of June, 1836, the relator must either demur, plead, or traverse to the return. The Commonwealth *vs.* The Commissioners of Allegheny County, - - - - - - - - 92

Mandamus is the only adequate remedy for a municipal bondholder against public officers, in case those officers refuse to assess and collect the tax to meet the interest on said bond, when the law requires them to do so. *Ibid.*

The fact that 300 bond creditors would be required to sue twice a year for their interest, would render the ordinary common law action for debt an inadequate remedy. *Ibid.*

Mandamus is the proper remedy whenever an act of Parliament or the Legislature gives power, or imposes an obligation on particular persons to do some particular act or duty, and provides no specific legal remedy for non-performance. *Ibid.*

The allegation of a return to a writ of mandamus must be direct, and stated in the most unqualified manner, not argumentatively. *Ibid.*

The negotiation of bonds at a rate below that prescribed by law does not invalidate them; but *quære*, whether a municipal corporation might not obtain equitable relief by means of a reduction of their amount to the sum actually paid, provided a proper case could be made before a chancellor. *Ibid.*

Mandamus is the proper legal remedy against a municipal corporation refusing or neglecting to levy a tax to pay interest on the bonds issued by the corporation. Maddox *vs.* Graham, - - - - - - 746

It will be granted on the petition of an individual bondholder. *Ibid.*

Where a party by his conduct shows he does not intend to do an act required by law, an express demand and refusal is not necessary before the granting of the writ of mandamus. *Ibid.*

It is sufficient to allege in the writ that the petitioner is the owner of bonds with coupons attached, and unless there be a clear and unequivocal denial of this allegation, no further proof of ownership is necessary. *Ibid.*

MARITIME LEGISLATION.

See American Transportation Company *vs.* Moore, - - - 15

MASTER AND SERVANT.

By an agreement between the plaintiff and defendant, the former agreed to serve the latter for the term of ten years as a servant (a brewer,) and that he would during that time well, truly and faithfully serve him; and the defendant agreed that during the said term he would pay the plaintiff the weekly sum of 2*l.* 10*s.* During the service under the agreement, the defendant had an attack of rheumatic gout, which required him to remove to a distance for change of air. He was absent thirteen weeks, after which he returned to his service. The defendant having refused to pay him the weekly sum of 2*l.* 10*s.* during these thirteen weeks, the plaintiff brought the present action: Held, that the plaintiff was entitled to recover. Cuckson *vs.* Stone, - - - - - - - - - 250

A master is not liable for an injury to a servant occasioned by the breaking of a flag, where the master's knowledge of the defect in the flag was not alleged. Totts *vs.* Plunkett, - - - - - - - 555

A master is not bound to warrant each servant his safety in the course of his common employment. *Ibid.*

The facts must be stated out of which an alleged breach of duty arises. *Ibid.*

It is not necessary that a plaintiff should negative everything which might constitute a defence, but he must affirm everything which would constitute a liability on the part of a defendant. *Ibid.*

MASTER. See Seaman.

MEASURE OF DAMAGES. See Damages.

MISDIRECTION. See Question of Law.

MISTAKE. See Equity. Injunction.

The duty of the Governor in granting letters patent to a corporation under the general railroad law of 1849, in Pennsylvania, upon the certificate of the commissioners named in the special act of incorporation that the provisions of the general law have been complied with, is of a discretionary, and not of a ministerial nature, and cannot, therefore, be interfered with by injunction or mandamus. Mitcheson *vs.* Harlan, - - 468

The commissioners named in a special act of incorporation under the general railroad law having, as was alleged, acted, in taking the subscriptions to the stock of the company, in a fraudulent and illegal manner, a bill was filed on behalf of persons who had been thus prevented from subscribing to restrain the promoters of the company from applying for letters patent, and from proceeding to organize the company by the election of officers and otherwise, and also to have the former subscriptions declared void, and the commissioners directed to open a new subscription, and for these purposes an injunction was applied for. The Governor in the meantime granted the letters patent, which fact was alleged in a supplemental bill. The injunction was refused by the court, on the ground, that it was too late to prevent the issuing of the letters, and that to prevent the further organization of the company would amount to a forfeiture of the charter, which could only be done at law by *scire facias* or *quo warranto*. *Ibid.*

Where the original bill is for any reason fatally defective, it cannot be made the basis of a supplemental bill. *Ibid.*

MORTGAGE. See Assignment. Insurance.

MUNICIPAL BOND HOLDER. See Mandamus.

MUNICIPAL CORPORATION. See Bond.

A municipal corporation has not, in general, power to make ordinances for the construction of canals, turnpikes, or railroads, beyond the territorial limits of its jurisdiction; nor to borrow money and pledge or encumber the individual property of its citizens for that purpose. Œbricke and Company *vs.* The City of Pittsburgh, - - - - - - 725

Where special legislative authority is asserted for such purposes, it must be shown to have been conferred in express terms, and is not to be assumed from inference or construction. *Ibid.*

The Pennsylvania Act of April 4, 1837, to incorporate "The Pittsburgh, Kittanning and Warren Railroad," which provides that "any incorporated company, city, or borough, shall have authority to subscribe" to the stock of that company "as fully as any individual," only authorizes a municipal corporation to *subscribe* to the stock, not to issue bonds or to tax the property of the corporators to pay the subscription on the bonds or their interest; and the Act of 14th April, 1852, does not extend the powers of such corporation in this respect. The bonds issued by the city of Pittsburgh, under these acts, *ruled* to be void. *Ibid.*

Under the Act of 21st April, 1852, to incorporate the Pittsburgh and Steubenville Railroad, which authorizes the city of Pittsburgh to subscribe to the stock of that company, and to borrow money to pay therefor, but provides "that no certificate of loan or bond shall be for a less sum than $100, and shall be transferable only on the books of the corporation." The city issued coupon bonds, with a blank power of attorney to transfer on the books of the city, endorsed. *Ruled*, that the holder of coupons of these bonds in suing thereon, must show himself to be an assignee of the bonds on the books of the city, as the mere possession of a coupon gives no right of action unless where the bonds are properly payable to bearer. *Ibid.*

But the coupon bonds issued by the city of Pittsburgh under the Act of May 8, 1854, supplementary to the charter of the Pittsburgh and Steubenville Railroad, ruled to be valid, and that suit might be brought by the holder of the coupons thereof. *Ibid.*

The Act of 7th February, 1853, incorporating the Chartiers Valley Railroad which authorizes subscription by the city of Pittsburgh to the stock of that company, provides that the certificates of loan or bonds issued for that purpose, "shall be transferable as shall be directed by the said corporation." The city issued coupon bonds. In an action on certain coupons detached from these bonds, *ruled* that though no ordinance of the city was shown to authorize the issue of the bonds in that form, it was to be presumed that it was so directed by the city. *Ibid.*

MUNICIPAL SUBSCRIPTION.

Although doubts may have been entertained by a minority of the court at a former period, as to the constitutionality of a municipal subscription for general railroad purposes, yet after the announcement of a solemn judicial decision by a majority of the court, the question is to be considered at rest. Commonwealth *vs.* Commissioners &c., - - - - 92

NAVIGATION.

See Admiralty.

The navigation of the great American lakes, and their connecting waters, is not "Inland Navigation" within the meaning of the Act of Congress entitled "An Act to limit the liability of ship-owners, and for other purposes," approved March 3d, 1851. And, therefore, where goods were entrusted to a common carrier, to be transported from New York to Detroit, by way of Lake Erie and the Detroit river, and while upon the steamboat of the carrier, in the harbor of Buffalo, in the course of transit, were destroyed by fire, without any negligence or fault on the part of the carrier or his agents, the carrier is not liable to the owner for the loss. American Transportation Company *vs.* Moore, - - - - 352

NEGLECT.

See Seaman.

NEGLIGENCE.

See Master and Servant.

The lessee of a ferry hired of the defendants for the day a steamer, with a crew, to carry his passengers across. The plaintiff, having paid his fare to H, passed across on the steamer, and while on board was injured by the breaking of a rope, owing to negligence of the crew in the manner of mooring:—*Held*, that the crew remained the servants of the defendants, who were therefore liable for their negligence; and that, as the negligence was such as would have made the defendants liable to a mere stranger, and the plaintiff was on board with their consent, it was immaterial that he was a passenger under a contract with H. Dalyell *vs.* Tyrer, - - - - - - - - - - 440

The declaration alleged that the defendants were possessed of a steamer navigated by their servants; that the plaintiff was lawfully, and with the defendants' consent, a passenger for hire on board the steamer; that it was the duty of the defendants' to navigate the steamer with reasonable care and skill, and to provide proper tackle, &c. That the defendants did not navigate with reasonable care and skill, and did not provide proper tackle, whereby and by the breaking of a rope, the plaintiff was injured. Pleas, not guilty; that the defendants were not possessed of the steamer navigated by their servants: that the plaintiff was not lawfully, and with the defendants' consent, a passenger for hire on board the steamer; and a traverse of the alleged duty of the defendants. A verdict having been found for the plaintiff.—Held, on a motion to enter the verdict on each or any of the pleas for the de-

fendant, and in arrest of judgment, that the above facts sufficiently proved the allegations traversed; and that the declaration disclosed a sufficient cause of action. *Ibid.*

Where a common carrier of live stock, as horses, permits a shipper to put straw into a car, although the company's agent told the shippers that if straw was used it must be at the shipper's own risk, and the shipper has signed a release from all claims for damage to live stock while in the company's cars, and the straw is fired and damage ensues to the animal, this is negligence, and the carrier is liable on his contract. Powell *vs.* The Pennsylvania Railroad Company, - - - - - 348

When the Court was requested to charge under the above facts, that if there was liability to fire from the locomotive, it was negligence for the the carrier to permit straw, which is a combustible material, to be used in the car, and if the jury find that the fire originated from that cause, the carrier is liable, it is error to refuse so to charge. *Ibid.*

A railroad company is liable for injuries to cattle occasioned by the *gross* negligence of its servants in the management of its engines, though the cattle were at the time trespassing on the line of the road, but without direct negligence on the part of their owner. Dictum in *Clark* vs. *Syracuse, &c. R. R Co.* 11 Barb. 112, dissented from. Stucke *vs.* The Milwaukie and Mississippi Railroad Company, - - - 732

The company, on the other hand, under such circumstance is not bound to the use of more than ordinary care. And where the owner of the cattle has himself been guilty of negligence, in allowing the beasts to be at large upon or in the vicinity of the road, or had suffered them to range in places where it was even remotely probable that they would stroll on the track; or being present at the time of the injury, made no effort to remove them, he would not be entitled to recover except for willful injuries. *Ibid.*

A railroad company, in the absence of any statutory provision, is not bound to fence in its track. *Ibid.*

In actions where there has been mutual negligence on the part of the plaintiff and defendant, and the negligence of each party, or of the plaintiff alone, has been the proximate cause of the injury, the plaintiff cannot recover; otherwise, where the negligence of the defendant has alone been the proximate cause of the injury. *Ibid.*

NEGOTIATION OF BONDS. See Mandamus.

NISI PRIUS. See Jurisdiction.

NON-RESIDENT. See Tax.

NOTE. See Contract. Pledge.

NOTICE (IN EQUITY.)

Whatever is sufficient to put a purchaser on inquiry is equal to notice, and he is bound at his peril to take notice of every deed, necessary to make out his title; and if his title deeds lead to facts disclosing an adverse title, the law charges him with knowledge of such facts. Gaugh *vs.* Greenlaws, - - - - - - - - - - 591

A mortgage is not such an outstanding legal title as will repel an innocent purchaser without notice, the legal title is deemed to remain in the mortgagor. *Ibid.*

ORPHAN.

On the construction of the Will of Stephen Girard, the word "orphan," held to mean a *fatherless* child, and not necessarily one who has lost *both* parents. The City of Philadelphia et al. *vs.* Soohan, by his next Friend, 386

The preference directed by the testator to be given to orphans born in the "City of Philadelphia," among applicants for admission to the College to be established under his Will, applies to the city as it was laid out by

William Penn, and existed at the death of the testator, and not as it was subsequently increased in territorial limit. *Ibid.*

PAROL CONTRACT.

See Usage.

PARTIES TO BILL.

Where, pending a bill to foreclose a mortgage, the mortgagee becomes a bankrupt, it is not necessary to make his assignee a party to the suit; and a valid foreclosure and sale of the mortgaged premises may be made, though the latter be not substituted. Cleveland *vs.* Bœrum, - - 144

PARTNERSHIP.

See Injunction.

It is a rule of equity in the distribution of the *joint and separate* assets of insolvent partners, that the individual assets of a partner be first applied to the debts of his individual creditors, and the partnership assets first to the partnership debts—the preference of the separate creditors in the individual property resulting as a necessary correlative from the priority of the joint creditors, in the joint effects inseparable from the nature of the relation of the partners to each other. Rogers, Assignee, *vs.* Merauda, Assignee, - - - - - - - - 35

This rule does not apply when there is no joint estate for distribution, and no living solvent partner. *Ibid.*

But where there are both joint and separate effects for distribution, the joint creditors can, in equity, only look to the surplus of the separate estate of a partner, after the payment of his individual debts. *Ibid.*

And the individual creditors can, in like manner, only seek distribution from the partnership effects, out of the surplus of the joint fund after payment of the partnership debts. *Ibid.*

The individual creditors of a partner are not entitled to an equal distribution with the partnership creditors out of the joint effects, on account of an indebtedness of the firm to such partner for money loaned by him to the firm, unless the money loaned was obtained by the firm fraudulently, or advanced by the partner with an improper design to augment the joint estate by a reduction of the separate estate. *Ibid.*

PASSENGER RAILWAY.

Where, in an act of the legislatnre incorporating a City Passenger Railway, it was provided that the consent of the City Councils, to use or occupy the streets should be first obtained before said company should construct their track, and the City Councils by ordinance declared their disapproval of the said act and declined to allow the streets to be so used, it was held that the power designated by the legislature was exhausted and that no subsequent ordinance of the City Councils consenting to the use of the streets upon certain conditions could revive the privilege nullified by the ordinance of disapproval. Musser et al. *vs.* The Fairmount and Arch Street Railway Company, - - - - - - - - 284

PENNSYLVANIA ACTS.

See Bond. Municipal Corporation.

Act of April 4th, 1837.
Act of April 21st, 1852.
Act of February 7th, 1853.

PLEADING.

See Master and Servant. Negligence.

PLEDGE.

A pledge for a loan of money to be repaid at a *fixed* time, may be sold by the pledgee, after the time for redemption has gone by, and a demand for repayment duly made, provided reasonable notice be also given to the

pledger, of the time and place of the intended sale. Richards' Administrator *vs.* Davis, - - - - - - - - - 483

The law is the same where the pledge is a promissory note of a third person, when the note will not mature until long after the time fixed for repayment of the loan. *Ibid.*

POLICY. See Insurance.

POWER. See Dower.

PROCEEDING IN REM. See Admiralty.

QUESTION OF FACT.

Plaintiff's men were driving thirty-six oxen along the road between five and six o'clock of an evening in November; twenty-three escaped into a field of defendant's adjoining the road, through gaps in his fence. The men drove on the remaining thirteen to the nearest obtainable place of safety for the night, and returned (having been absent about an hour) for the other twenty-three left in defendant's field. Defendant had then impounded them, for which the plaintiff brought this action. The learned judge at the trial directed the jury that, under the circumstsnces of the case, the plaintiff's men had not removed, or tried to remove, the cattle within a reasonable time, and directed a verdict for the defendant:

Held, (Bramwell, B dissentiente,) to be a misdirection; that it was not a question of law for the opinion of the judge, but a question of fact upon the evidence given, that should be determined by the jury, and consequently there must be a new trial. Goodwyn *vs.* Chaveley, - - 684

QUESTION OF LAW. See Question of Fact.

RAFT. See Sale.

RAILROAD.

See Bond. Carrier. Contract. Corporation. Negligence.

All trusts depend much upon the implications growing out of the state of the property, the purposes desired to be accomplished, and the mode provided for that end. Sturges *vs.* Knapp and the Troy and Boston Railroad Company, - - - - - - - - - 203

This is true, to a great extent in regard to all contracts. It is only by means of the constructive additions and limitations imposed by courts, that a brief memorandum of a contract is ever made to speak truly and fully the mind of the parties. *Ibid.*

But upon no subject is there so much demand for the exercise of construction, and of judicial implications, as in regard to trusts; and especially trusts of a complicated and public character. And these are not less a part of the contract than its most express provisions. *Ibid.*

All corporate action, as well that of the directors and agents, as of the corporation itself, is but a succession of trusts, in regard to which the creditors of the corporation, in the order of their priority, are the primary, and the shareholders the ultimate cestuis que trust. *Ibid.*

The trust imposed upon the trustees in the first instance, and before foreclosure, is fiduciary and active. *Ibid.*

After the foreclosure, and until the cestuis que trust are in a condition to act for themselves, the trustees are bound to control and manage the property, in the best mode for all concerned. *Ibid.*

After the surrender of a railroad to the trustees upon the forfeiture, and before foreclosure, and while that state of the property might fairly be presumed to be but temporary, the trustees could not be expected to surrender the trust to the cestuis que trust. *Ibid.*

And after the foreclosure, the necessity of action is so pressing and the difficulty and consequent delay so great, in effecting any legitimate action of the cestuis que trust, that there seems an absolute necessity for the trustees continuing the management of the property for the time being

and until it can properly be taken into custody of the cestuis que trust. *Ibid.*

The mode of management must be such as a prudent and experienced owner would adopt under the circumstances of the case. *Ibid.*

In this case, the trustees having no rolling stock and no means of purchasing any, could not be expected to attempt operating the road on their own account, except as matter of strict necessity, and when it was practicable. *Ibid.*

As they had the opportunity of leasing rolling stock for this road, or leasing their property to a connecting road, they might fairly decide between these modes. And having made a short experiment of hiring rolling stock, and experienced a serious loss for the time, it was natural and proper to effect a lease with a connecting road. *Ibid.*

This they did in a reasonable and prudent manner, as it seems to us. *Ibid.*

The term being absolutely for one year, with the right to allow it to extend to ten years, if no notice to the contrary were given, was all that could be desired on the part of the lessors. *Ibid.*

The rent was favorable, and the clause for renewals and repairs being such as is necessary to maintain the works in proper condition for use, "natural wear only excepted," was all that could be expected or desired. *Ibid.*

The statute of this State enabling our roads to lease to roads connecting with them at the line of the State, and those interested in the Troy and Boston Company not objecting to the lease, and the State of New York having taken no measures to avoid the contract or interfere with that company on that account, the plaintiffs cannot object to the supposed want of authority in the lessees. *Ibid.*

The lease cannot be avoided on the part of the lessors or those they represented, on the ground of any informality in its terms or unreasonableness in its provisions, unless a case is shown of want of power, that the contract is *ultra vires*. *Ibid.*

RAILROAD SUBSCRIPTION. See Injunction.

"READY MONEY." See Bequest.

RES JUDICATA. See Municipal Subscription.

RETURN. See Mandamus.

RIGHT OF SUPPORT.

Plaintiff owned a house, adjoining it was a house of a third person, and adjoining this third person's house were two houses of defendants. The four houses for more than thirty years past were, all of them, out of the perpendicular, leaning to the west. Defendants contracted to have their houses (which were the most westward) pulled down, and others erected in their places. The contractor pulled them down, and by so doing the plaintiff's house fell and did damage: *Held*, that the plaintiff had not established his claim to a right of support for his house, and enjoyed as of right from the defendants through the medium of the plaintiff's house being supported by the intermediate house which leaned upon the defendant's. Solomon *vs.* The Vintners' Company, - - - - 622

SALE.

See Bill of Exchange. Pledge.

S. had a raft which had been measured by an official person as of 71,443 feet, and putting this measurement in G's hands, agreed as follows: "Sold to G. a raft, the quantity about 71,000 feet, to be delivered at the I. booms, price 7¾d. per foot" S. conveyed the raft to the I. booms, giving notice thereof to G.'s servants, who helped to fasten it there. A storm having arisen and destroyed the raft: Held, affirming the judgment of the court of error, Upper Canada, that there was evidence for the jury of delivery,

and they having found the fact of delivery, the risk fell on G., for the contract did not imply that anything more was to be done by S. on his own or on G 's behalf, or in which both were to concur before the property passed. Gilmour *vs.* Supple, - - - - - - - - 239

SALE OF LAND.

See Equity.

SALE BY THE ACRE.

See Equity.

SCHOOL.

A teacher in the public schools has a right to enforce a regulation, by the corporal chastisement of a child refusing to repeat the Ten Commandments, though that refusal proceeds from a conscientious objection on the part of the child to the particular version of the Bible used, and is made by the direction and under the authority of his father. Commonwealth *vs.* Cooke, - - - - - - - - 417

The authority of a parent cannot justify the disobedience, by a child, of the regulations of a school. *Ibid.*

SEAMAN.

A seaman receiving an injury in the performance of his duties must be cured at the expense of the ship. Brown *vs.* Overton, - - - 413

On a voyage from Calcutta to Boston, and twenty-five days before passing in sight of St. Helena, a seaman fell from aloft and broke both legs. *Held*, that it was the duty of the master to have put into St. Helena for the cure and relief of the seaman. *Ibid.*

The master was also held responsible for neglect during the passage and after reaching Boston. *Ibid.*

SET-OFF.

A set-off can properly be pleaded only where the parties are the same and the debts mutual. Hurdle *vs.* Hanner, - - - - - 58

SHERIFF. See Judgment.

SLAVE. See Damages.

SPECIFIC PERFORMANCE. See Jurisdiction.

STATUTE LAW. See Banking.

STATUTE REQUIREMENTS. See Action.

STEAMBOAT. See Admiralty.

SUICIDE. See Life Insurance.

SUNDAY. See Breach of the Peace.

SUPREME COURT. See Jurisdiction.

TARIFF.

The 20th section of the tariff act of 1842, is still in force, and is embodied in the act of 1857. Gamble *vs.* Mason, - - - - - 178

That whether an article imported into the country, and which is not specifically enumerated in the schedule of the act, bears a similitude in material, quality, texture or use, to one which is enumerated, is a question which a jury must determine. *Ibid.*

TAX.

The statute of the State of New York, which provides that all persons doing business in the State of New York, as merchants, bankers, or otherwise, and *not residents* of the State, shall be assessed and taxed on all sums invested in their business, the same as if they were residents of the State, is not in conflict with any provision of the Constitution of the United States. Duer *vs.* Small, Receiver of Taxes, - - - - - 500

TEACHER. See School.

THEFT. See Insurance.

TRANSPORTATION. See Contract.

TREASURER. See Attachment. Execution.

TRESPASS.

The owner of a beast prone to commit trespasses, is liable for its injurious acts without regard to the degree of care bestowed in controling it. Rossell *vs.* Cottom, - - - - - - - - 405

Trespass cannot be sustained against the owner of cattle, from injury committed while in the custody of an agister; if liable at all, he is liable only in case. *Ibid.*

TRUST.

See Assignment. Insurance. Railroad.

UNDERWRITER.

See Insurance.

USAGE.

A written contract expressed that defendant had bought "fifty tons of best palm oil, expected to arrive in Bristol from Africa, per the Chalco, at 40*l.* 10*s.* per ton, usual tare and draught. Wet, dirty, and inferior oil, if any, at a fair allowance; and if any difference should arise, the same to be settled by arbitration." In an action for not accepting the oil, parol evidence was admitted of a usage of trade at Bristol, to show that a delivery of a substantial portion of best oil with inferior descriptions, in the proportion of one-fifth best and four-fifths inferior, would have been a compliance with the contract:—Held, that the written contract having left undefined what portion of the oil was to be wet, dirty and inferior, the evidence of usage was admissible as explaining its terms. Lucas and others *vs.* Bristowe, - - - - - - - - 306

USURY.

The statute of the State of New York, that no corporation shall interpose the defence of usury, does not extend to suits against accommodation endorsers for corporations. The Market Bank of Troy *vs.* John B. Smith, Vliet, and Richards, - - - - - - - - 667

Quere. Where the law of a State forbids a corporation taking over a certain amount of interest, is a contract for a greater amount void? If not void, the surplus interest paid should be credited to the debtor, as not collectable. *Ibid.*

VINDICTIVE DAMAGES.

See Libel.

VOLUNTARY CONVEYANCE.

A voluntary conveyance in Tennessee, (prior to the act of 1852,) could not be set aside as fraudent against creditors, except at the suit of a creditor whose debt was ascertained by judgment. Gaugh *vs.* Greenlaws, 591

VOYAGE. See Insurance.

WAGES See Master and Servant.

WAIVER. See Jury.

WIFE. See Larceny.

WILL. See Bequest.

WITHDRAWAL OF JUROR. See Jury.